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UNITED STATES DEPARTMENT OF COMMERCE
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Washington, D.C. 20231

Melvin Winokur
Merck & Co., Inc.
P.O. Box 2000
Rahway, NJ 07065-0907

In Re: Patent Term Extension
Application for
U.S. Patent No. 4,621,077

4127

NOTICE OF FINAL DETERMINATION

A determination has been made that U.S. Patent No. 4,621,077, which claims the human drug product FOSOMAX®, is eligible for patent term extension under 35 U.S.C. § 156. The period of extension has been determined to be 1,371 days.

The period of extension has been calculated using the FDA determination of the length of the regulatory review period published in the Federal Register of May 29, 1996 (61 Fed. Reg. 26,912). Under 35 U.S.C. § 156(c):

$$\begin{aligned}\text{Period of Extension} &= \frac{1}{2} (\text{Testing Phase}) + \text{Approval Phase} \\ &= \frac{1}{2} (2,375) + 183 \\ &= 1,371 \text{ days}\end{aligned}$$

Since the regulatory review period began September 29, 1988, after the patent issue date (November 4, 1986), the entire period has been considered in the above determination. No determination of a lack of due diligence under 35 U.S.C. § 156(c)(1) was made.

Neither the five year limitation of 35 U.S.C. § 156(g)(6)(A) nor the 14 year limitation of 35 U.S.C. § 156(c)(3) operate to reduce the period of extension determined above.

A single request for reconsideration of this final determination as to the length of extension of the term of the patent may be made if filed within one month of the date of this notice. Extensions of time under 37 CFR § 1.136(a) are not applicable to this time period. In the absence of such request for reconsideration, the Commissioner will issue a certificate of extension, under seal, for a period of 1,371 days.

Upon issuance of the certificate of extension, the following information will be published in the Official Gazette:

U.S. Patent No.	:	4,621,077
Granted	:	November 4, 1986
Original Expiration Date	:	November 4, 2003
Applicant:		Sergio Rosini et al.

184

Owner of Record : Istituto Gentili S.p.A.

Title : Pharmacologically Active Biphosphonates,
Process For The Preparation Thereof And
Pharmaceutical Compositions Therefrom

Classification : 514/108

Product Trade Name : FOSOMAX®

Term Extended : 1,371 days

Expiration Date of Extension : August 6, 2007


Any correspondence from applicant with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box Patent Ext.
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Special Program Law Office

By hand: One Crystal Park, Suite 520
2011 Crystal Drive
Arlington, VA

Telephone inquiries related to this determination should be directed to Karin Tyson at (703) 306-3159.



Hiram H. Bernstein
Senior Legal Advisor
Special Program Law Office
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

cc: Ronald L. Wilson, Director
Health Assessment Policy Staff
Office of Health Affairs (HFY-20)
Food and Drug Administration
5600 Fishers Lane, Room 15-22
Rockville, MD 20857

RE: FOSAMAX®
FDA Docket No.: 96E-0036

185